

# **Exhibit F**

# **Exhibit B**

## **Redacted Portions**

### **Filed Under Seal**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE )  
COMMISSION, )  
Plaintiff, ) Case No.  
vs. ) 20 CV 10832 (AT)  
RIPPLE LABS, INC.; BRADLEY )  
GARLINGHOUSE, and CHRISTIAN A. )  
LARSEN, )  
Defendants. )  
----- )

DEPOSITION OF WILLIAM HAROLD HINMAN, JR.

WASHINGTON, D.C.

JULY 27, 2021

REPORTED BY: Tina Alfaro, RPR, CRR, RMR

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DIGITAL EVIDENCE GROUP  
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Washington, D.C. 20036  
(202) 232-0646

1 expertise with respect to the application of the  
2 federal securities laws to transactions in digital  
3 assets?

4 A. I was someone in the firm that people came  
5 to with questions of that sort. So, you know, sort  
6 of in the middle. It was new for everyone, but I  
7 had taken an interest in it and had studied it a  
8 little bit. So probably above average, but no one  
9 knew a whole lot.

10 Q. And why is that no one knew a whole lot?

11 A. Because the instruments were just being  
12 shaped and formed and it was early days of this  
13 activity.

14 Q. And there had not been a lot of litigation  
15 as to when a transaction in a digital asset would  
16 constitute a security, correct?

17 MR. TENREIRO: Object to form.

18 A. I don't believe so.

■ ■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

2 A. I don't think they were ever a client.

3 They might have been involved with matters I was  
4 involved in, but I don't think they were a client.

5 Q. And how about ConsenSys?

6 A. No.

7 Q. And how about the Ethereum Foundation?

8 A. No.

9 Q. And I mean this in a very broad sense When  
10 I talk about the Ethereum foundation and I'm  
11 reading from language on their Website. So if  
12 you'll bear with me.

13 "The Ethereum Foundation is not a company  
14 or even a traditional nonprofit. Their role is not  
15 to control or lead Ethereum, nor are they the only  
16 organization that funds critical development of  
17 Ethereum-related technologies. The Ethereum  
18 FoundationSo with that very amorphous, broad  
19 definition of the Ethereum Foundation do you  
20 believe you represented any company, individual, or  
21 entity that was involved in the Ethereum Foundation  
22 as I just described it?

[illegible]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

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[REDACTED]

15 THE REPORTER: Can I get a spelling on  
16 Ethereum.

17 MR. FIGEL: E-T-H-E-R-E-U-M.

18 THE REPORTER: Thank you.

19 Q. I'd like to now direct your attention to  
20 the period after you announced your retirement from  
21 Simpson Thacher until you joined the SEC as a  
22 director of the division of corporate finance?

1 because I didn't know what order we were going to  
2 be offering the documents there's an internal  
3 document.

4 So Mr. Hotseater, I'm showing Mr. Hinman a  
5 document that is in the outline as Exhibit CC. I'm  
6 sorry. AA.

7 (Hinman Exhibit 6 was marked  
8 for identification.)

9 BY MR. FIGEL:

10 Q. Do you have Exhibit 6 in front of you?

11 A. The only thing I have is my bio.

12 Q. So I show you what's been marked as  
13 Exhibit 6. I'll represent to you that I believe  
14 this is the Supreme Court's decision in SEC versus  
15 Howey. I just want to follow up on your earlier  
16 testimony that you said that prior to joining the  
17 SEC you had familiarized yourself with Howey as it  
18 may relate to digital assets, correct?

19 A. I believe so.

20 Q. Okay. Approximately when was that?

21 A. Probably mid 2016, late 2016 I believe.

22 Q. And did you do that in anticipation of

1 becoming the director of the division of corporate  
2 finance?

3 A. No.

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 Q. All right. Prior to joining the SEC had  
21 you applied the Supreme Court's decision in Howey  
22 to any facts that you had at that time about

under the federal securities laws?

A. And, again, we're talking about the first six months of my tenure?

Q. Uh-huh.

A. No.

Q. Again, it may have happened, but as you sit here today, you're not aware of it?

A. Exactly.

MR. FIGEL: Okay. I'm sorry. We've had a motion to take a break. Is that all right?

MR. TENREIRO: Whatever you want.

THE VIDEOGRAPHER: Off the record at  
10:04.

(A short break was had.)

THE VIDEOGRAPHER: Back on the record at  
10:18.

BY MR. FIGEL:

[REDACTED]

[REDACTED]

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[REDACTED]

11 Q. Again, we will -- I think we've created  
12 the record and, you know, just so the record's  
13 clear, we don't believe that's an appropriate  
14 privilege instruction, but we'll move on.

15 Before the break I was asking you about  
16 whether you were aware in, say, the first six  
17 months after you became the division director about  
18 various work product that had been created. Were  
19 you aware of any work product that had been created  
20 within the division of corporate finance as to  
21 whether XRP or transactions in XRP were securities  
22 or investment contracts under the federal

1 Q. So any time the division of corporate  
2 finance issued a no action letter that would be  
3 publicly available?

4 A. That's right.

5 Q. So let's put aside interactions with  
6 lawyers and the public that are requesting a no  
7 action letter.

8 A. Okay.

9 Q. Do you recall other issues that were  
10 brought to you and members of your staff about the  
11 application of the federal securities laws to  
12 digital asset transactions in which they sought  
13 guidance without seeking a no action letter?

14 A. Yes.

15 Q. Tell me what you -- tell me what you  
16 recall on that issue.

17 A. Frankly, the one I recall the most clearly  
18 is probably the one when XRP came in with a person  
19 who had my position before me, as well as  
20 enforcement counsel. They were interested in is  
21 there a way to restructure what we're doing to  
22 bring it within compliance of the securities laws,



1 and the first thing I said to them was you're  
2 continuing to offer XRP without any kind of  
3 restrictions that would apply as a securities  
4 offering. If you want to come into compliance you  
5 have to stop doing that, and they understood that.

6 Q. All right. Other than the issues with  
7 respect to Ripple, can you identify any other  
8 lawyers that came to you, not seeking a no action  
9 letter, but seeking guidance with respect to  
10 transactions in digital assets?

11 A. Yes.

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

■ [REDACTED]

2 Q. Any other lawyers representing --  
3 withdrawn.

4 Any other lawyers you recall coming to you  
5 or members of the staff seeking advice on digital  
6 asset -- the application of the federal securities  
7 laws to digital asset transactions other than what  
8 you've testified to?

9 A. Yes. I mean, this is a -- this is a big  
10 topic at the SEC. So there's lots of folks coming  
11 in and asking for advice how to comply. I don't  
12 want to get into law firm names or -- unless you  
13 think it's relevant, but, you know, other folks at  
14 law firms would come in, talk about an idea that  
15 would be embedded in a token, and there were a  
16 number of folks that said we'd like to do this on a  
17 registered basis because we think -- we recognize  
18 it is a security and how would we best do that,  
19 could we use regulation A, could we use form S1.

20 Because these were somewhat novel  
21 securities there were questions around what's  
22 material in terms of the disclosures you might have

1 to do in that context. We had those kinds of  
2 discussions with XRP specifically, if they were  
3 going to register, what would the things be that  
4 would be relevant.

5 Q. Move to strike about XRP because I asked  
6 you for your recollection of meetings that didn't  
7 involve XRP or --

8 A. I'm sorry. I missed that.

9 Q. There were frequent meetings; is that fair  
10 to say?

11 A. Yes. I mean, it was something that  
12 happened with some frequency at the division.

13 Q. And when lawyers or industry participants  
14 came to you and asked for guidance, I believe you  
15 earlier testified that the division of corporate  
16 finance didn't provide legal advice, correct?

17 A. That's right.

18 Q. So how were you able to -- withdrawn. Let  
19 me try this differently.

20 Did you keep a calendar when you were at  
21 the SEC?

22 A. Yes.

will "play a key role in shaping the future regulatory environment in which we and they operate."

A. Right.

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[illegible]

1           So a number of instances.

2           Q.   Okay.   So picking up on your testimony  
3 with respect to Ms. Szczepanik --

4           A.   Yes.

5           Q.   -- I'd like to show you 9; is that  
6 correct?

7           THE REPORTER:   Yes.

8                               (Hinman Exhibit 9 was marked  
9                               for identification.)

10          BY MR. FIGEL:

11           Q.   What I'll ask the court reporter to mark  
12 as Exhibit 9.   It's DD in the outline.   Again, I'll  
13 represent to you this is a copy of a page on the  
14 SEC's Website -- or available on the SEC's Website,  
15 which I believe is the press release announcing  
16 Ms. Szczepanik in the position that you just  
17 described.

18           A.   Okay.

19           Q.   The date of this press release is  
20 June 4th, 2018, correct?

21           A.   That's right.

22           Q.   And is that approximately the date on



1 which you appointed Ms. Szczepanik to be the senior  
2 advisor for digital assets and innovation?

3 A. That's the date it was announced. She was  
4 sort of functionally operating this way for some  
5 time, but in terms of making a formal announcement  
6 of it and creating the actual office, yes, June 4th  
7 is about the time.

8 Q. And that office was within the division of  
9 corporate finance, correct?

10 A. That's right.

11 Q. So Ms. Szczepanik reported to you?

12 A. That's right.

13 Q. And this you testified to earlier I  
14 believe was one of the examples of an action that  
15 you spearheaded as described in the Andreessen  
16 Horowitz blog post, correct?

17 MR. TENREIRO: Object to form.

18 A. This is an action that was done under my  
19 direction.

20 Q. But this would be an action that would  
21 fall within the statement on Exhibit 8 that you  
22 spearheaded the SEC's early work with digital

1 MR. TENREIRO: Okay.

2 MR. FIGEL: For the hotseat this would be  
3 a document that you would have received this  
4 morning that has -- that's marked JJ2, and I'll ask  
5 the court reporter to mark this document as  
6 Exhibit 14.

7 (Hinman Exhibit 14 was marked  
8 for identification.)

9 BY MR. FIGEL:

10 Q. Mr. Hinman, you're not on this e-mail.

11 A. Uh-huh.

12 Q. So you're free to read it if you'd like,  
13 but I'll represent to you you're not on it.

14 MR. TENREIRO: Reid, is this from last  
15 night's production?

16 MR. FIGEL: Yes.

17 MR. TENREIRO: Okay.

18 MR. FIGEL: I'll explain to Mr. Tenreiro,  
19 you can correlate these to the earlier ones --

20 MR. TENREIRO: The earlier ones being  
21 Exhibits 1 through 3?

22 MR. FIGEL: Yes.

1 BY MR. FIGEL:

2 Q. I believe you testified earlier, but what  
3 was Amy Starr's responsibility on or about  
4 December 7, 2017?

5 A. At that point I don't think the FinHub had  
6 been set up which she later joined. So I think she  
7 was just a senior person in the division with  
8 oversight of novel securities.

9 Q. Did you direct Ms. Starr to contact  
10 Mr. Lubin to set up a meeting with the division of  
11 corporate finance?

12 A. I don't remember doing that. It's  
13 possible, but I don't have a specific recollection  
14 of asking her to do that.

15 Q. If you'd take a look at the Bates No. 446  
16 of Exhibit 14.

17 A. 446? Yeah.

■ ■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
■ [REDACTED]  
■ ■ [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 A. Okay.

20 Q. And the issues as he describes it above  
21 are issues involving blockchain tokens and  
22 securities regulations.

1 A. Okay.

2 Q. Did you have an understanding in advance  
3 of the December 13th meeting with ConsenSys as to  
4 what specific issues involving blockchain tokens  
5 and securities regulations they wanted to address?

6 A. No, I don't have a recollection of a  
7 specific set of topics.

8 Q. This may be an unfair question, but I'm  
9 going to ask it. Do you have any recollection of  
10 clicking on the links to these e-mails or reviewing  
11 the documents that are associated with these links?

12 MR. TENREIRO: He's not copied on the  
13 e-mail, but go ahead.

14 A. Yeah. I was just going to say that. I'm  
15 not sure I got this e-mail, but I don't remember  
16 clicking on any links.

17 Q. Do you remember doing any reading before  
18 the December 13th meeting?

19 A. No, I don't.

20 Q. So let's go to the meeting on December 13,  
21 2017. You attended a meeting on that date with  
22 representatives of ConsenSys, correct?

1 MR. FIGEL: Oh, did he?

2 MR. TENREIRO: Now he has up Exhibit 146,  
3 which is Exhibit 3.

4 MR. FIGEL: So let's go back to the one  
5 you did have up then. He was correct. Sorry.

6 (Hinman Exhibit 15 was marked  
7 for identification.)

8 BY MR. FIGEL:

9 Q. Do you recall reading this document before  
10 the meeting that you attended that you recall as  
11 the first meeting you had with representatives of  
12 ConsenSys?

13 A. I don't recall that.

14 (Hinman Exhibit 16 was marked  
15 for identification.)

16 BY MR. FIGEL:

17 Q. I'm going to show you a document that I'll  
18 ask the court reporter to mark as Hinman  
19 Exhibit 16. Again, you're not on this, but I think  
20 for the record it will be useful.

21 A. Okay.

22 MR. FIGEL: And Mr. Tenreiro, I'll just

1 represent to you that our understanding of the  
2 documents we got from ConsenSys last night suggests  
3 that Exhibit 15, which is in front of Mr. Hinman,  
4 was attached to this e-mail that has been marked as  
5 Exhibit 16 and was transmitted by Mr. Corva to Amy  
6 Starr on December 12th.

7 Q. I don't have any questions for you on  
8 that, Mr. Hinman, other than I'm just making a  
9 representation that our understanding is this was  
10 something that was circulated to the division of  
11 corporate finance before the meeting.

12 A. When you say "the meeting" --

13 Q. Well, the meeting --

14 MR. TENREIRO: There's no -- there's no  
15 question on the record. I don't have any -- I  
16 don't have any -- you know, thank you for your  
17 representation. I don't think there's any question  
18 pending.

19 MR. FIGEL: There is not.

20 If you could take a look at --

21 MR. TENREIRO: Just, you know, you do keep  
22 saying "the meeting" and there's a little bit of



1 confusion here because, you know, he says he  
2 doesn't remember attending this meeting. I think  
3 that's hopefully clear on the record to everybody.

4 MR. FIGEL: Fair enough.

5 BY MR. FIGEL:

6 Q. The meeting that you recall, do you recall  
7 any discussion at the meeting of Exhibit 15?

8 A. No.

9 Q. Let me direct your attention to Bates  
10 No. 280 -- ending 286 in Exhibit 16. You'll see on  
11 the left there's a reference to the blockchain  
12 project at Cardozo School of Law; do you see that?

13 A. Yes.

14 Q. Is that the project that you testified to  
15 earlier that Mr. Wright was affiliated with in some  
16 way?

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 Q. Do you recall anyone stating to you at the  
21 meeting that you recall in substance that the  
22 purpose of what Mr. Wright was working on was to

1 explore the regulatory challenges raised by  
2 blockchain technology?

3 A. Do I recall someone saying that to me?

4 Q. Yes.

5 A. No.

6 Q. In substance.

7 If you could look at the page of this  
8 exhibit that ends with Bates 299. Do you recall  
9 seeing this page in connection with the meeting  
10 that you recall?

11 A. I don't recall this slide deck. So  
12 certainly not this page.

13 Q. Do you remember anyone telling you in  
14 substance that entrepreneurs and others lack  
15 guidance on how to sell tokens that should not be  
16 securities?

17 MR. TENREIRO: From the outside, is that  
18 what you're asking, someone from the outside  
19 telling him that?

20 MR. FIGEL: Yes. Yes. Sorry.

21 Did you understand my question,  
22 Mr. Hinman?

1 A. Why don't you repeat it.

2 Q. I'm focusing you on the meeting that you  
3 recall and Mr. Tenreiro's observation that you  
4 don't remember the date, which I understand. I  
5 think the record's clear on that. I'm now asking  
6 you if you recall that during that meeting that you  
7 remember you were told in substance that  
8 entrepreneurs and others lack guidance on how to  
9 sell tokens that should not be securities.

10 A. I don't have a specific recollection of  
11 that being said to me at that meeting, no.

12 Q. How about a general recollection?

13 A. Well, you made a very specific statement.  
14 Anything like that in terms of people lacking  
15 guidance?

16 Q. Uh-huh.

17 A. No, I don't remember that coming up.

18 Q. If you could turn the page to the next  
19 page ending in Bates No. 300.

20 A. Yes.

21 Q. I take it this doesn't refresh your  
22 recollection of seeing this slide deck, correct,

1 seeing this page?

2 A. It doesn't.

3 Q. All right. Do you remember anyone stating  
4 in substance at the meeting you remember that  
5 entrepreneurs and investors may lack an  
6 appreciation for regulatory risk?

7 A. Not at that -- not at the meeting I do  
8 recall, no.

9 Q. How about more generally? Do you remember  
10 hearing from third parties that entrepreneurs and  
11 investors lack an appreciation of the regulatory  
12 risk of transactions in digital assets?

13 A. I didn't hear something specifically  
14 lacking an appreciation of regulatory risk. I did  
15 hear -- not at this meeting that we're talking  
16 about, but in general that some people had the idea  
17 that if you called something a token it wouldn't be  
18 subject to the U.S. securities laws, that just by  
19 naming it a token and by creating a digital token  
20 you create an instrument that wasn't subject to  
21 U.S. securities law regulation.

22 Q. And that was a perception that you

1 approach is what he said.

2 MR. TENREIRO: He said that.

3 THE REPORTER: Hey, guys.

4 MR. FLUMENBAUM: The record should reflect  
5 what he said.

6 MR. TENREIRO: Absolutely.

7 MR. FLUMENBAUM: Principle-based approach,  
8 and then you interrupted.

9 MR. TENREIRO: Yes. I just want to  
10 caution Director Hinman not to discuss  
11 deliberations with the staff.

12 THE WITNESS: Got it.

13 MR. TENREIRO: Sorry. And thank you.

14 BY MR. FIGEL:

15 Q. Why don't we try this. Yes or no, did the  
16 commission promulgate regulations that created a  
17 safe harbor for the issuance of digital assets  
18 during your tenure as the director of the division  
19 of corporate finance?

20 A. No.

21 MR. FIGEL: All right. Let's go to in the  
22 outline it is tab UU, and we're up to 19.

1 seems to be a response to the chairman's question,  
2 Chairman Huizenga.

3 MR. FIGEL: Did I miss that?

4 MR. TENREIRO: I just want there to be a  
5 clear record. Towards the top it says "Chairman  
6 Huizenga: Thank you."

7 MR. FIGEL: Thanks. You're correct.

8 You gave that testimony, correct?

9 A. Yes.

10 Q. And you were under oath?

11 A. Yes.

12 Q. Was it true that you were trying to  
13 provide as much guidance as you could to the  
14 marketplace?

15 A. Yes.

16 Q. As of April 26, 2018 had the division of  
17 corporate finance issued an interpretive relief  
18 about the circumstances under which a digital asset  
19 transaction would be an investment contract or a  
20 security?

21 A. Did you say "interpretive release"?

22 Q. Uh-huh.

1 A. No.

2 Q. As of April 26, 2018 had the SEC --  
3 withdrawn.

4 As of April 26, 2018 had the division of  
5 corporate finance issued a regulation about the  
6 circumstances under which a digital asset  
7 transaction would be an investment contract or a  
8 security?

9 A. No.

10 Q. And the division of corporate finance had  
11 not engaged in any rulemaking activity about the  
12 circumstances in which a digital asset transaction  
13 would be a security, correct?

14 MR. TENREIRO: I object to form and also  
15 instruct the witness not to answer internal  
16 deliberations about potential rulemaking. Are you  
17 talking about rulemaking activities externally such  
18 as requesting notice of comments or --

19 MR. FIGEL: Yes.

20 MR. TENREIRO: Okay.

21 MR. FIGEL: Public announcement of a  
22 potential rulemaking as to when a digital asset

1 transaction would be viewed as a security under the  
2 federal securities laws.

3 A. No.

4 Q. And that is all guidance that you could  
5 have provided, correct?

6 A. That's a form of guidance, yes.

7 (Hinman Exhibit 26 was marked  
8 for identification.)

9 BY MR. FIGEL:

10 Q. Director Hinman, I'm now going to show you  
11 what's in the binder as tab YY and which I will ask  
12 the court reporter to mark as Exhibit 26 I believe.

13 (Witness reviewing document.)

14 A. Okay.

15 Q. Do you recall receiving this e-mail from  
16 Ms. Szczepanik on May 16, 2018?

17 A. This refreshes my recollection.

18 Q. And you responded to that e-mail, correct,  
19 at the top?

20 A. Yes.

21 Q. Any reason to believe this is not a true  
22 and accurate copy of the e-mail that you exchanged



1 response.

2 A. That's right. This is not a proposed  
3 response. These are, I believe, subtopics for the  
4 major heading. These were additional questions  
5 they were thinking of asking.

6 Q. What is your basis for your testimony that  
7 you understood that these were subtopics that they  
8 proposed?

9 A. Because when you read them all in context,  
10 it's clear that they are sort of follow-on  
11 questions. If you read No. 2, for instance, it's  
12 pretty clear that's another question they're going  
13 to ask.

14 Q. And focusing now on 4A --

15 A. Right.

16 Q. -- you'll see that it was deleted?

17 A. Right.

18 Q. And I will represent to you my  
19 understanding is that Mr. Seaman deleted this  
20 portion of the document.

21 MR. TENREIRO: What's the basis of that  
22 understanding, Reid?

1 MR. FIGEL: Our review of the metadata.

2 If you look to -- depends how you present it, but  
3 if you go to the second document, it says on some  
4 version of it deleted by Michael Seaman.

5 MR. TENREIRO: Okay. I think there's no  
6 foundation to that right now in the record, but go  
7 ahead and ask the question.

8 MR. FIGEL: Let's open the native file and  
9 I'll try and show you because I think it's  
10 important.

11 MR. TENREIRO: Even if it is, you can ask  
12 him if he directed Seaman to delete it, I mean,  
13 does he remember that.

14 BY MR. FIGEL:

15 Q. Did you direct Mr. Seaman to delete these  
16 subtopics?

17 A. I don't recall directing him to do that.

18 Q. Do you have an understanding as to why he  
19 deleted these subtopics?

20 MR. TENREIRO: Without disclosing  
21 deliberations or conversations.

22 A. I don't have a specific recollection of

1 reading the particular deletion here. I think he  
2 may have been looking for a broader question rather  
3 than something that was characterizing some of our  
4 advice or our guidance in this area. This looks  
5 very narrow and we might not have agreed with the  
6 premise of the question.

7 Q. Well, do you agree that one of the key --  
8 one of the key points of your June 14, 2018 speech  
9 was that "The token and the offering may be  
10 distinct. The token may be offered in a securities  
11 offering at some point and the future offerings may  
12 be nonsecurities. Nonetheless the touchstone of  
13 the analysis is likely the Howey test prong  
14 regarding an expectation of profit solely from the  
15 efforts of others. A sufficiently decentralized  
16 network token does not rely on the efforts of  
17 others"?

18 MR. TENREIRO: Object to form. Do you  
19 want to break that up? I mean --

20 MR. FIGEL: No.

21 MR. TENREIRO: It's impossible to answer  
22 that. Go ahead.

1 MR. FIGEL: Do you disagree that that was  
2 a key point of your June 14, 2018 speech?

3 MR. TENREIRO: Object to form.

4 A. I think that is too narrow a reading of  
5 the speech. I think it's -- again, I think why  
6 Michael may have deleted this is the premise of  
7 this was that these were the key items, and I think  
8 it was reducing a five-page speech or six-page  
9 speech, whatever it is, to one paragraph.

10 Q. Turn the page, if you would, and go to  
11 question 6.

12 A. Yeah.

13 Q. So you'll see in the portion of the e-mail  
14 that's in different colors that, according to your  
15 understanding, "The moderators suggested another  
16 issue is that to the outside observer the SEC can  
17 be opaque. With all the divisions -- different  
18 divisions and offices how do you know who to call?  
19 You call ten different law firms, they give you ten  
20 different answers, each of them has their own  
21 particular spin. It's like the white light of your  
22 speech went through a prism and came out in ten

1 different colors of legal advice."

2 Let's just focus on those sentences. Do  
3 you know why -- did you direct Mr. Seaman to delete  
4 that portion of the proposed question?

5 MR. TENREIRO: Object to form.

6 A. I don't recall directing him to do that.  
7 It's hard to tell from the way this document's  
8 presented whether he added the statement "Another  
9 issue is that to the outside observer is that the  
10 SEC can be opaque. With all the different  
11 divisions and offices how do we know who to call."  
12 That looks like that's something he added. It was  
13 probably trying to give me an opportunity to say  
14 here's how you can get your answers -- answers to  
15 questions you may have.

16 Q. Do you believe that Mr. Seaman wrote "You  
17 call ten different law firms, they give you ten  
18 different answers"?

19 A. No. I think that is struck out in the  
20 document I have in front of me. So my guess is  
21 that this is a very long three-paragraph, almost a  
22 full page question, and he may have deleted it for

1 any number of reasons.

2 Q. Fair to say that the moderators believe  
3 that "You call ten different law firms, they give  
4 you ten different answers," correct?

5 MR. TENREIRO: I'm just going to -- Reid,  
6 I'm going -- I'm going to just to note an  
7 objection. Judge Netburn has ruled on your fair  
8 notice defense. The focus is not on what the  
9 market participants believed. It's an objective  
10 test. You're skating dangerously close in my  
11 opinion to opening the door to what people  
12 believed, including your client. Go on if you'd  
13 like.

14 MR. FIGEL: Noted.

15 Can you answer my question?

16 A. Sure. I just want to make sure -- answer  
17 the question? Okay.

18 I don't know what the moderators thought  
19 when they were coming up with these questions, what  
20 was in their mind, if they thought It was a  
21 colorful way to describe a question or ask a  
22 question. I don't really know what they had in

1     their mind. It's hard for me to read somebody  
2     else's mind.

3           Q. But you have no reason to believe that  
4     Mr. Seaman added that portion to this document,  
5     correct, "You call ten different law firms" all the  
6     way down to "Ten different colors of legal  
7     advice"?

8           A. No. Again, I think this was a deletion,  
9     but I don't know the history of the -- of the  
10    questions, who initially drafted them, who changed  
11    them, but my best guess would be that Mr. Seaman  
12    added the language that's in red but not struck out  
13    and struck the things that are struck.

14          Q. All right. Let's go to sub A on 6.

15          A. Sub A on 6. Okay.

16          Q. Beginning with "Another issue" and ending  
17    with "Different lawyers." Do you have an  
18    understanding as to whether Mr. Seaman added that  
19    or whether Mr. Seaman deleted that?

20          A. Again, I don't know the editorial history  
21    here. So my previous statement that I think he  
22    probably struck things that are marked out and

1 added things that are just in red, but I don't have  
2 firsthand knowledge of that.

3 Q. All right. Same question with respect to  
4 the next portion of this, "New insights are based  
5 on who can get a meeting or which lawyer says they  
6 know someone in the right office. There have been  
7 some efforts to avoid this and to try to bring the  
8 conversations on this topic into an open forum and  
9 find consensus on best practice." Do you have any  
10 reason to believe that Mr. Seaman added this?

11 MR. TENREIRO: Object to form.

12 A. Same answer.

13 Q. And same set of questions all the way to  
14 the bottom. Any information about who added the  
15 language and who deleted it?

16 A. No. Again, I think things that are in red  
17 such as "Do you have plans to issue more guidance"  
18 were likely added by Mr. Seaman, and other things I  
19 just don't know the editorial history.

20 Q. Do you know whether there was a video  
21 recording made of your remarks at the Tech GC  
22 National Summit on November 26th?



[illegible]

(Hinman Exhibit 35 and Exhibit 36 were marked for identification.)

BY MR. FIGEL:

Q. So I'm now showing you what is in the outline as PPP and which I will ask the court reporter to mark as Exhibit 35. In light of the concern about the time I'm going to also show you

1 what's in the outline as QQQ and which I'll ask the  
2 court reporter to mark as Exhibit 36.

3 (Witness reviewing document.)

4 A. Okay.

5 Q. You're not on Exhibit 35, but have you  
6 seen that document?

7 A. I don't remember seeing that e-mail.

8 Q. And the attachment, do you recall seeing  
9 that document?

10 A. I don't.

11 Q. All right. You'll see on  
12 Exhibit 35 -- let me back up. Do you know Robert  
13 Cohen in the division of enforcement?

14 A. I do know Rob, yes.

15 Q. And who is he?

16 A. At the time I think he was, you know, a  
17 staff member in enforcement. He may have -- I  
18 don't know the exact date, but there was a crypto  
19 asset group and Rob may have been heading it at  
20 that point.

21 Q. And you'll see in the e-mail there's a  
22 reference to setting up a potential meeting. Did

1 you attend a meeting with Mr. Cohen and Ms. Johnson  
2 and Mr. Rosenblum?

3 A. I don't think so.

4 Q. To your knowledge, did anyone from the  
5 division of corporate finance attend a meeting with  
6 Ms. Johnson, Mr. Rosenblum, and --

7 A. I don't know.

8 Q. Let's go to tab 36, and if you could take  
9 a look at the page here that ends in 2983. In  
10 outline form it's direct your attention to D1.

11 A. B1.

12 Q. D as in David.

13 A. I'm probably on the wrong page. Give me  
14 the page number again.

15 Q. The Bates is 2983.

16 A. Okay.

17 Q. And the portion of the outline is the --  
18 is D and D1, D and Romanette 1.

19 A. My 2983 is -- okay. So it's 85. Oh, 85  
20 on mine.

21 MR. TENREIRO: There's two Bates. That's  
22 why it's confusing him. I think it's from where it

1 says "From a petitioner's perspective," right?

2 MR. FIGEL: Correct. As I understand  
3 your --

4 A. All these pages are 83 except for the  
5 specific page you're trying to get to is 85.

6 Q. I believe the way the SEC produces  
7 documents is the top one suggests a number that is  
8 posted on all things that are connected, and then  
9 the one below it is the sequential number.

10 MR. TENREIRO: Your guess is as good as  
11 mine.

12 A. I think it's the other way around, but  
13 that's okay.

14 Q. If you could just read into the record D  
15 and Romanette 1.

16 A. "From a practitioner's perspective the  
17 situation in the cryptocurrency markets is  
18 extremely unusual. Token issuers can speak to two  
19 different well-regarded experienced law firms and  
20 get diametrically opposite views on the current and  
21 future applicability of federal securities laws and  
22 what steps the token issuer needs to take to engage

1 in a compliant token offering."

2 Did you learn from any source on or about  
3 October 23rd, 2018, you know, within weeks that  
4 Ms. Johnson and Mr. Rosenblum had informed  
5 Mr. Cohen in substance of the information you just  
6 read?

7 A. I don't remember ever hearing about that.

8 Q. If you could read D Romanette 3-2 into the  
9 record, please.

10 A. "This is not normal and, in fact, this is  
11 largely unprecedented in our experience."

12 Q. Go down to 2, if you would.

13 A. You want me to read the --

14 Q. Yeah. "Lawyers, law firms, and other  
15 gatekeepers."

16 A. So not the general one, the other one?  
17 Okay.

18 "Lawyers, law firms, and other  
19 gatekeepers, however, do not typically disagree on,  
20 for example, whether federal securities laws apply  
21 at all or what analysis is for determining  
22 whether -- or what the analysis is for determining

1 whether instruments are securities."

2 Q. Did you learn from any source on or about  
3 October 23rd, 2018 that Ms. Johnson and  
4 Mr. Rosenblum had expressed this view to Mr. Cohen  
5 and others?

6 A. I don't recall that, no, I don't think I  
7 did.

8 MR. FIGEL: Can we go off the record for a  
9 second.

10 THE VIDEOGRAPHER: Off the record at 5:39.

11 (A short break was had.)

12 THE VIDEOGRAPHER: Back on the record at  
13 5:45.

14 EXAMINATION

15 BY MR. FLUMENBAUM:

16 Q. Good afternoon, Mr. Hinman.

17 A. Hi.

18 Q. I'm going back to the privilege logs that  
19 Mr. Figel introduced. They reflect that you sent  
20 your speech to Mr. Clayton, correct?

21 A. Among others, yes.

22 Q. Did you send them to any other

1 MR. FLUMENBAUM: You may answer.

2 A. I didn't feel like the input was going to  
3 be worth the extra delay.

4 Q. So the only commissioner that you cared  
5 about was Mr. Clayton, correct?

6 MR. TENREIRO: Object to form.

7 A. That's not true.

8 Q. Do you know whether Mr. Clayton had a  
9 relationship with ConsenSys or Ether or any of the  
10 entities in the Ether network prior to his joining  
11 the SEC?

12 A. Not that I'm aware of.

13 Q. Are you aware that Sullivan & Cromwell  
14 represented ConsenSys?

15 MR. TENREIRO: Objection to form. Go  
16 ahead.

17 A. I didn't know if they were a firm client.  
18 I think some of the people at the ConsenSys  
19 meetings had a Sullivan & Cromwell background. I  
20 don't know if they were still there appearing as,  
21 you know, the law firm for ConsenSys. So I wasn't  
22 aware if they -- of their relationship.

1 Q. Now, you testified earlier that the SEC  
2 had policy against owning digital assets for quite  
3 some time; do you remember that?

4 A. Do I remember testifying to that?

5 Q. Yes.

6 A. Yes.

7 Q. And when did you first become aware that  
8 the SEC had a policy against owning digital assets?

9 MR. TENREIRO: Object to form and to  
10 relevance. This is way beyond what she ordered you  
11 to ask him about. Go ahead.

12 A. When did I become aware of that policy?

13 Q. Yes.

14 A. While I was at the SEC, probably the first  
15 year I was at the SEC.

16 Q. When you joined the SEC in May of 2017 did  
17 the SEC have a policy against owning digital  
18 assets?

19 A. I'm not sure.

20 Q. Isn't it a fact that the policy against  
21 owning digital assets wasn't instituted until 2018?

22 MR. TENREIRO: Objection to form.



1 A. I'm not sure that's right.

2 Q. When do you think it was instituted?

3 MR. TENREIRO: Objection to form.

4 A. I think a policy was adopted probably  
5 around the time you're suggesting, but prior to  
6 that time I think if you had any financial interest  
7 in something you were involved in you were to  
8 recuse yourself or not have the interest. So I  
9 think the policies are broad enough to, you know,  
10 stop people from having interest in assets that  
11 they were involved in.

12 Q. You're talking about two different things,  
13 aren't you? You're talking about a conflict of  
14 interest policy as opposed to a policy against  
15 owning digital assets, correct?

16 MR. TENREIRO: Objection to form.

17 A. I'm talking about policies that might  
18 restrict someone from owning digital assets.

19 Q. Did the policy against conflicts of  
20 interest restrict people from owning digital assets  
21 if they didn't have any conflicts of interest?

22 MR. TENREIRO: Objection to form.

1 A. I'm not sure how the policy would have  
2 been applied at that point.

3 Q. When -- you stated that you did not own  
4 any digital assets, correct?

5 A. Correct.

6 Q. Did you own stock in any company that did  
7 own digital assets?

8 MR. TENREIRO: Are you talking about at  
9 the time at the SEC?

10 MR. FLUMENBAUM: Yeah.

11 MR. TENREIRO: Okay.

12 A. Not that I'm aware of.

13 Q. Did you own stock in Alibaba?

14 A. No.

15 Q. Did you own stock in Ant Financial?

16 A. No.

■ ■ [REDACTED]

■ [REDACTED]

■ ■ [REDACTED]

■ ■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] ■

[illegible]

[REDACTED]

[REDACTED] [REDACTED]

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[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

Q. Thank you.

Let me show you a document which is dated  
January 15, 2014 and it's SEC production

1 No. 1345799. We'll mark this as -- what are we up  
2 to? 38?

3 MS. PROSTKO: 38. And for the hotseat  
4 this is document 040.

5 (Hinman Exhibit 38 was marked  
6 for identification.)

7 BY MR. FLUMENBAUM:

8 Q. Have you ever seen this document before  
9 today?

10 A. I may have seen this. I don't recall  
11 specifically.

12 Q. Am I correct, sir, that this is a policy  
13 with respect to ethics conflicts among the staff,  
14 correct?

15 A. Right.

16 MR. TENREIRO: Object to form.

17 Q. And this policy doesn't prohibit anybody  
18 from owning Bitcoin; isn't that correct?

19 MR. TENREIRO: Objection to form and  
20 mischaracterizing, the document speaks for itself.

21 A. Does it prohibit owning Bitcoin? I'm  
22 sorry.

1 Q. Yes.

2 A. Well, again, looking at this quickly, "I  
3 own Bit-" -- the document has a question, "I own  
4 Bitcoin, have been assigned to part of a working  
5 group at the SEC making recommendations with  
6 respect to Bitcoin, can I do this." "Answer: No."  
7 Then it goes on to cite parts of the U.S. code that  
8 say federal employees are -- prohibits all federal  
9 employees from working on any particular matter  
10 where they may have a direct or particular effect  
11 on the employees's financial interest, and then  
12 they go on to give examples.

13 Q. So am I correct, sir, that if you were not  
14 involved in making recommendations as to how to  
15 regulate Bitcoin, you would be able to own Bitcoin  
16 by the SEC?

17 MR. TENREIRO: Objection to form. You're  
18 asking him to give you a legal opinion --

19 MR. FLUMENBAUM: Come on. Object to form  
20 and let's move on. No speeches.

21 A. I'm sorry. Could you ask your question  
22 again?

1 Q. Yeah. Does this refresh your recollection  
2 that employees of the SEC unless they had a  
3 conflict of interest were permitted to own digital  
4 assets?

5 MR. TENREIRO: Object to form.

6 A. Again, if they were not involved in the  
7 space in any way, which, you know, that's a pretty  
8 broad -- SEC views these things pretty broadly. So  
9 potentially I think you could own Bitcoin if you  
10 were involved in something completely away from it.

11 Q. And would you actually need permission to  
12 buy Bitcoin if you were in that position of not  
13 having anything to do with the regulation of  
14 Bitcoin?

15 MR. TENREIRO: Objection to form.

16 A. I'd have to refresh myself on the  
17 securities clearance procedures. If you buy  
18 securities you're supposed to get them precleared.

19 Q. And am I correct that digital assets were  
20 not covered by the securities clearance form until  
21 2018?

22 MR. TENREIRO: Objection to form.

1 A. Again, I'll take your word for that, but

2 I --

3 Q. Didn't you help write the policy in 2018?

4 MS. KELLY: Object to form.

5 MR. TENREIRO: Object to form. Go ahead.

6 A. I don't remember specifically helping on  
7 the policy. I probably had conversations with  
8 people on the staff about it.

9 Q. I want to point your attention to also it  
10 says in this document that the "OEC has been  
11 informed that the status of Bitcoin as either  
12 currency or securities is undetermined at this  
13 time"; do you see that?

14 A. Yeah.

15 Q. And as far as you knew, that was true?

16 MR. TENREIRO: Objection to form.

17 A. With respect to the ethics office? The  
18 document speaks for itself.

19 Q. Did there come a time that the status of  
20 Bitcoin as either currency or securities changed?

21 MR. TENREIRO: Objection to form.

22 A. For what purpose? For the purpose of the



1 regulations from the Department of Treasury?

2 MR. TENREIRO: Object to form.

3 A. I don't know what Treasury had applied in  
4 terms of their money laundering rules to Ether. I  
5 don't know off the top of my head.

6 Q. And what about with respect to Bitcoin?

7 MR. TENREIRO: Object to form.

8 A. Same answer. I'm not sure how they are  
9 applying those rules to those two assets.

10 Q. Now, you mentioned in response to  
11 Mr. Figel's questioning that you were not aware of  
12 any rulemaking proceedings that you were involved  
13 in in connection with digital assets; is that  
14 correct?

15 MR. TENREIRO: Object to form.

16 A. Rulemaking proceedings is very broad. So,  
17 you know, we did a lot of rulemaking while I was at  
18 the SEC in my division and in other divisions.  
19 Would they -- you asked broadly would they apply to  
20 digital assets. If someone was in the business of,  
21 you know, mining Bitcoin or pick a digital asset  
22 business and they were a registered company with

1 us, the rulemakings would be relevant to them in  
2 terms of disclosures. So you're asking a very  
3 broad question. If you mean are there specific  
4 digital asset rules -- rulemakings that I was  
5 involved in, I don't think we had a specific  
6 rulemaking per se.

7 Q. That's what I was getting at.

8 A. Okay.

9 Q. And you also mentioned no action letters?

10 A. Right.

11 Q. Were there any no action publicly -- no  
12 action letters approved in 2017 that related to the  
13 applicability of digital assets to securities laws?

14 A. I don't know if anyone sought one in 2017.  
15 There were some people trying to use blockchain  
16 technology for stock transfers. I don't know if  
17 they got a no action letter, but some of that would  
18 precede a little of my time all 2017.

19 Q. Well, the first no action letter that I  
20 see under your regime was in 2019. Am I missing  
21 something?

22 MR. TENREIRO: Objection to form.

1           A. I'd have to go back and look at the no  
2           action letters to see, you know, each one that was  
3           granted and dates.

4           Q. Do you recall any that specifically  
5           related to the applicability of the securities laws  
6           to digital assets in 2017 or 2018?

7           A. I don't remember when we issued the pocket  
8           full of coins or there was a -- I forget the name  
9           of it -- a jet token, what the dates of those are.  
10          Maybe you do.

11          Q. Is that the only one you remember?

12          A. I think there were some others, but I  
13          might have been less involved with those. Again,  
14          you asked very broadly if that applied to digital  
15          assets. So you were --

16          Q. I changed the question slightly --

17          A. Okay.

18          Q. -- to involve the applications of  
19          securities laws to digital assets.

20          A. Again, I remember the two, and I'd have to  
21          go back and do some work to see if there were  
22          others that were relevant.

1 Q. But there wasn't a plethora of no action  
2 letters issued by the SEC in this space during your  
3 tenure?

4 MR. TENREIRO: Objection to form.

5 A. I remember the ones I remember. So...

6 Q. The two?

7 A. Yes.

8 Q. Okay.

9 A. Actually I think there might have been a  
10 third, but, again, I'd have to go back and look.

11 Q. Mr. Figel showed you the Dow report, that  
12 was in 2017?

13 A. Yes.

14 Q. And that was issued a couple months after  
15 you joined?

16 A. Yes.

17 Q. And what role did you play in the issuance  
18 of that report?

19 MR. TENREIRO: Just generally the role.

20 A. I reviewed it, I commented on it, talked  
21 to different members -- you know, enforcement about  
22 it, talked to the chairman's office about it.

1 clients that hired them or just instead as  
2 objective observers of the market?

3 MR. FLUMENBAUM: Objection as to form.

4 MR. FIGEL: Objection.

5 A. Generally people were -- if they were  
6 counsel, they had been hired by someone to present  
7 their views on their behalf.

8 Q. Thank you.

9 Did you attend meetings while you were  
10 director of the division of corporation finance  
11 with representatives of Ripple in connection with  
12 the SEC's staff's investigation of Ripple?

13 A. Yes.

14 Q. Approximately how many meetings?

15 A. Probably four, maybe a few phone calls as  
16 well.

17 Q. Where were those meetings?

18 A. Either in the SEC's offices or on Zoom  
19 calls.

20 Q. Was Mr. Garlinghouse at some of those  
21 meetings?

22 A. I think he may have been at one or two of

1 the early meetings.

2 Q. What about Andrew Ceresney, do you know  
3 who that is? Do you know who Andrew Ceresney is?

4 A. I do.

5 Q. Who is that in connection with this case?

6 A. I believe he was Ripple's counsel and  
7 formerly the director of the division of  
8 enforcement at the SEC.

9 Q. What about Meredith Cross?

10 A. She's -- she attended some of these  
11 meetings and is a partner at WilmerHale and  
12 formerly held the same position I formerly hold,  
13 director of the division of corporation finance.

14 Q. Did you have meetings with either  
15 Ms. Cross or Mr. Ceresney about the SEC staff's  
16 investigation of Ripple's conduct?

17 A. Yes.

18 Q. Have you ever at any time told any  
19 Ripple's representatives that you did not think  
20 their offers and sales of XRP were securities  
21 transactions?

22 MR. FLUMENBAUM: Objection as to form, and

1 I'm specifically stating that if you enlisted an  
2 answer, you're violating the process.

3 MR. TENREIRO: No. This is external.  
4 External statements -- just you --

5 MR. FLUMENBAUM: We're going to ask for  
6 notes of his meetings. You're opening the door to  
7 things that you've claimed privilege on.

8 MR. TENREIRO: You've asked for those  
9 notes already.

10 MR. FLUMENBAUM: We're going to get them  
11 this time. Go ahead.

12 MR. TENREIRO: Have you ever, Mr. Hinman,  
13 at any time told any Ripple's representatives that  
14 you did not think their offers and sales of XRP  
15 were securities transactions?

16 MR. FLUMENBAUM: Objection as to form.  
17 You may answer.

18 A. No.

19 Q. Have you ever told any Ripple  
20 representative that the SEC itself or any of its  
21 commissioners did not think that Ripple's offers  
22 and sales of XRP were securities transactions?

1 MR. FLUMENBAUM: Objection as to form.

2 A. No.

3 Q. Did you ever witness anyone at the SEC  
4 tell any such thing to any Ripple representative  
5 while you worked at the SEC?

6 MR. FIGEL: Objection.

7 MR. FLUMENBAUM: Objection as to form.

8 A. No.

9 Q. What did you tell Ripple's representatives  
10 at these meetings about sort of your views? And  
11 only communicate what you told them externally.

12 A. A number of things. So that's a broad  
13 topic, but when Meredith Cross came in with Andrew,  
14 one of the purposes of that meeting as I understood  
15 it was to try to bring the company into compliance  
16 and to examine ways that that could happen. So one  
17 of the things I told them was the first thing you  
18 need to do and I'm kind of surprised you haven't  
19 done it already is stop selling XRP on an  
20 unregistered basis publicly.

21 We also told them that we were concerned  
22 about the asymmetries between what they -- what the



1 people at Ripple knew about the prospects for XRP  
2 and what the market knew, and we explored with them  
3 the idea of Ripple becoming a public company to  
4 help reduce those asymmetries.

5 THE REPORTER: Did you say "help reduce"?

6 THE WITNESS: Help reduce those  
7 asymmetries.

8 Q. Anything else you recall generally that  
9 you told -- that you told them at these meetings?

10 A. Yeah. I think I expressed concerns about  
11 did investors have all the information that they  
12 should have about the prospects and did they get  
13 that on a timely basis. I expressed the concern  
14 about the lack of transparency.

15 Q. These meetings, can you give us the time  
16 frame for them approximately?

17 A. I think they were the last couple of  
18 years. It was a pretty long process. I don't  
19 remember exactly when Meredith first got involved.  
20 You know, Meredith as a capital markets lawyer  
21 would be someone who would understand the  
22 undertakings to become a public company, to provide

1 the disclosure, to bring the sales of XRP into  
2 compliance.

3 Q. But in terms of the years, I think you  
4 said the last few years? Are you talking about the  
5 last few years of your tenure there?

6 A. Yes. I'm sorry. Yeah. So that would  
7 have been probably -- I think some of these  
8 meetings began in 2018 and some early meetings with  
9 XRP representatives, general meetings, and then  
10 meetings trying to figure out how XRP could come  
11 into compliance were later, probably 2020.

12 Q. Okay.

13 Now, setting aside meetings with other  
14 members of any government, did you ever tell any  
15 person outside of the SEC that you did not view  
16 Ripple sales of XRP as securities transactions? So  
17 I'm talking about third parties only.

18 A. No.

19 MR. FLUMENBAUM: Objection.

20 Q. Did you ever witness any person from the  
21 SEC tell any person in the, again, outside world,  
22 not U.S. Government or other governments, that the

1 SEC did not view Ripple's sales of XRP as  
2 securities transactions?

3 MR. FLUMENBAUM: Objection as to form.

4 A. No.

5 Q. Did you have a meeting with Chair Clayton  
6 and representatives of Ripple sometime in 2018?

7 A. I believe they came in to meet with the  
8 chairman, yes.

9 Q. Did you ever hear Mr. Clayton tell anyone  
10 at Ripple that Mr. Clayton did not view Ripple's  
11 transactions as securities transactions?

12 MR. FLUMENBAUM: Objection as to form.

13 A. No.

14 Q. Did you ever hear Mr. Clayton give any  
15 assurances to anyone at Ripple that the SEC would  
16 determine that Ripple's sales were not securities  
17 transactions?

18 MR. FLUMENBAUM: Objection as to form.

19 A. No.

20 MR. TENREIRO: I'm going to mark -- I  
21 guess Exhibit 41 will be the next one?

22 THE REPORTER: Yes.

1 (Hinman Exhibit 41 was marked  
2 for identification.)

3 BY MR. TENREIRO:

4 Q. For the record, this is a memorandum SEC-  
5 LIT-E-MAILS-456558. The date is August 20, 2018.

6 A. Okay.

7 Q. Mr. Hinman, do you see this memorandum  
8 says it's written from Sean Memon?

9 A. Yes, I see that.

10 Q. Who is that in 20 -- in August 2018?

11 A. Deputy chief of staff to the chairman.

12 Q. Okay. Have you seen this memorandum  
13 before?

14 A. You showed them to me.

15 Q. Okay. And have you had a chance to read  
16 it now?

17 A. Yes.

18 Q. Okay. Do you -- are the statements in  
19 this memorandum consistent with whatever  
20 recollection you might have -- actually, do you see  
21 that it says here that you attended a meeting on  
22 August 20, 2018 with representatives from Ripple?

1 Do you see that part?

2 A. Yes.

3 Q. Do you have any reason to doubt that that  
4 is true?

5 MR. FLUMENBAUM: Objection as to form.

6 A. No.

7 Q. Having read the document, is whatever  
8 stated here consistent with whatever recollection  
9 you might have about what occurred at this meeting?

10 MR. FIGEL: Objection.

11 A. Let me finish reading.

12 It's consistent.

13 Q. Okay. And so just to be -- just to wrap  
14 up on the prior point, setting aside this meeting  
15 in this document, Director Hinman, I just want to  
16 be sure I understood you. You at some point told  
17 Andrew Ceresney in his capacity as Ripple's  
18 attorney that you thought the XRP transactions  
19 might be problematic under the securities laws; is  
20 that correct?

21 MR. FLUMENBAUM: Objection as to form.

22 It's inconsistent with his testimony.

1 MR. TENREIRO: Did you ever tell  
2 Mr. Ceresney in his capacity as Ripple's attorney  
3 that you thought that their transactions in XRP  
4 might, you know, have an issue under the securities  
5 laws?

6 MR. FLUMENBAUM: Objection as to form.

7 MR. FIGEL: The leading is really  
8 inappropriate with the commission witness.

9 MR. TENREIRO: Okay. Can you answer,  
10 please.

11 A. Basically my answer would be what I  
12 told -- what I remember telling Mr. Ceresney and  
13 Meredith Cross about my views on XRP, that I viewed  
14 it as a security and I viewed the continuing  
15 offerings -- periodic offerings of XRP in a way  
16 where they were not restricted in the way a  
17 securities offering would be restricted and  
18 therefore exempt or they weren't registered as a  
19 problem under the securities laws. If they were  
20 interested into coming into compliance they should  
21 start by stopping those sales.

22 Q. Based on the meetings you attended and

1 your conversations with Ripple's representatives,  
2 did you have any reason to believe that Ripple's  
3 representatives did not understand the securities  
4 laws principles that might apply to their conduct?

5 MR. FLUMENBAUM: Objection as to form.

6 A. I had no reason to believe they didn't  
7 understand it. Meredith was a very accomplished  
8 securities lawyer.

9 MR. TENREIRO: I don't have anything else.  
10 Thank you.

11 FURTHER EXAMINATION

12 BY MR. FLUMENBAUM:

13 Q. Meredith Cross occupied your position as  
14 head of corp fin?

15 A. She did.

16 Q. And she -- she said to you that in her  
17 view XRP was not a security, correct?

18 A. I don't think she ever said that to me.

19 Q. She never said that to you?

20 A. I don't recall her saying that, no.

21 Q. Mr. Ceresney was head of enforcement at  
22 the SEC?

1 at some point in 2018 that sales of XRP may violate  
2 the securities laws. Is that what you testified  
3 to?

4 MR. TENREIRO: Object to form.

5 A. That I had a view that their sales  
6 violated securities laws?

7 Q. Yes.

8 A. Yes.

9 Q. Okay. And just to be clear, in 2018 there  
10 was no preliminary injunctive relief that the  
11 commission sought against Ripple in relation to any  
12 sales of XRP; is that correct?

13 A. That's right.

14 Q. And that's true of 2019 also, correct?

15 A. Correct.

16 Q. And that's true of 2020 also, right?

17 A. That's right.

18 Q. In fact, the lawsuit wasn't brought  
19 against Ripple in relation to any of its sales of  
20 XRP until December 22nd, 2020, correct?

21 MR. TENREIRO: Go ahead. Object to form.

22 If you're going to keep asking him facts that are



1 in the record, we're going to instruct -- we're  
2 going to finish the deposition and you can  
3 call Judge --

4 MR. SOLOMON: I'm trying to move through  
5 this quickly if you'll give me a few more minutes.

6 MR. TENREIRO: Matt, it is in the record  
7 when the lawsuit was filed.

8 MR. SOLOMON: Is that correct?

9 A. When this lawsuit was filed?

10 Q. Yes.

11 A. I've not examined the record. So I don't  
12 know the date --

13 Q. Was it late December 2020?

14 THE REPORTER: Guys.

15 A. I don't -- I don't know. I think it was  
16 December 20, 22nd, somewhere in that range.

17 Q. Fair enough. And when that lawsuit was  
18 brought there was no preliminary injunctive relief  
19 sought in relation to sales of XRP; is that your  
20 recollection?

21 A. Not that I'm aware of.

22 Q. No, there was no preliminary injunctive

1 relief sought at that time?

2 A. I wasn't at the SEC at that time. So not  
3 that I was aware of.

4 Q. Let's take a look at one document that  
5 Mr. Tenreiro showed you which is an August 20, 2018  
6 memorialization of one of the meetings that you  
7 testified to where my client Brad Garlinghouse  
8 attended. Do you have that document in front of  
9 you?

10 A. I do.

11 Q. Okay. This looks like a post-speech  
12 memorandum authored by two individuals, Sean Memon,  
13 deputy chief of staff, and Brian Rabbitt, senior  
14 policy advisor; is that right?

15 A. Yeah. I just want to --

16 Q. Sorry. This is just a one-page document.

17 A. Yes. Yes.

18 Q. Okay. And this memorandum, is there  
19 anything about this that strikes you as inaccurate,  
20 or does this seem to you to be an accurate  
21 memorialization, albeit a summary memorialization,  
22 of the meeting that you attended and testified

1 about on August 20th, 2018?

2 A. Yes, it was a short meeting. This seems  
3 accurate.

4 Q. Okay. And to be clear, by August 20, 2018  
5 you had delivered your speech to the marketplace  
6 where you gave your view that neither Ether nor  
7 Bitcoin are securities; is that correct?

8 MR. TENREIRO: Object to form.

9 A. Yes.

10 Q. Okay. And in this memo there was a  
11 discussion involving my client and Schwartz. Is  
12 that David Schwartz?

13 A. I believe so. That's what the memo says.

14 Q. Okay. About Ripple's business in  
15 technology, that's what the memo writes, right?

16 A. Correct.

17 Q. Okay. And it looks like there's also a  
18 notation that towards the end of the meeting  
19 Garlinghouse briefly noted that Ripple was in  
20 purgatory due to uncertainty as to whether XRP, the  
21 cryptocurrency with which Ripple is associated, is  
22 or is not a security. Do you see that sentence?

1 A. I do.

2 Q. Okay. So two individuals who attended  
3 that meeting were reporting back to an internal  
4 memo that at this point in time, August 2018, my  
5 client had orally indicated that there was  
6 uncertainty around the status of XRP. That's what  
7 this memo establishes, right?

8 MR. TENREIRO: Objection to form.

9 A. The memo says that. It says what it says.

10 Q. Do you have any reason to believe that the  
11 memo inaccurately reflects what my client said  
12 during that meeting?

13 A. No.

14 Q. Because Sean Memon and Brian Rabbitt  
15 wouldn't put something in an internal memo the day  
16 it happened if it was not accurate, right?

17 MR. TENREIRO: Object to form.

18 A. That's right.

19 Q. I'm sorry. What was your answer?

20 A. That's right.

21 Q. Thank you.

22 Then it goes on, the memo, to say "In

1 response Chairman Clayton immediately stated that  
2 the meeting was not the proper forum for a  
3 discussion about that topic." Do you see that  
4 sentence?

5 A. Yes.

6 Q. So there's no note in here that Chairman  
7 Clayton responded that there is clarity around  
8 whether XRP is a security, right?

9 MR. TENREIRO: Objection to form.

10 MR. SOLOMON: That's not in the memo.

11 A. I don't see that in the memo. Do you? I  
12 don't see it.

13 Q. Doesn't matter what I see. Do you see it?

14 A. I don't see it.

15 Q. I don't either. Okay.

16 Then it says "He then asked Garlinghouse  
17 to back up from that issue and steered the meeting  
18 to a discussion about Ripple's business in  
19 technology." Do you see that sentence?

20 A. I do.

21 Q. And then the last sentence of the memo,  
22 "Following further discussion of these issues, the

1 memo concluded and Chairman Clayton encouraged the  
2 Ripple executives to continue ongoing discussions  
3 with the staff, the division of corporation  
4 finance." Do you see that as well?

5 A. I do.

6 Q. Is there anything in this memo that  
7 indicates that Chairman Clayton was of the view  
8 that sales of XRP in August of 2018 were security  
9 sales?

10 MR. TENREIRO: Objection to form. You  
11 mean other than when he tells him not to talk about  
12 that with him?

13 MR. SOLOMON: That wasn't my question.

14 Is there anything in the memo that  
15 indicates that Chairman Clayton stated the view  
16 that XRP sales were sales of securities? Do you  
17 see that here?

18 MR. TENREIRO: Objection to form.

19 A. I don't see him saying one way or another  
20 anything about the characterization of Ripple --  
21 XRP.

22 Q. And that would have been a significant

1 piece of information had he said that, correct?

2 A. I think the chairman was steering the  
3 conversation away from that topic because I think  
4 he was aware that people were gathering more  
5 information about XRP at that point.

6 Q. Okay. And is there anything in here,  
7 Mr. Hinman, that indicates that you expressed a  
8 view at this meeting that you believed sales of XRP  
9 were security sales at this point in time?

10 A. No.

11 MR. SOLOMON: That's all I have.

12 MR. TENREIRO: Great. We're done. You  
13 guys have spent more time than we did on the  
14 questions. If you want to move to bring him back,  
15 we'll see your motion.

16 MR. FIGEL: Jorge --

17 MR. TENREIRO: He's been here for 11  
18 hours. He has been here for 11 hours. You showed  
19 him about 20 documents that he was not even copied  
20 on with Rob Cohen on them and with other people on  
21 them. You've had him for 11 hours and you could  
22 have asked him all of these questions. You had

1           As I understand your testimony both in  
2     response to Mr. Tenreiro's questions and  
3     Mr. Flumenbaum's questions about the meetings with  
4     Ripple or representatives of Ripple, there was a  
5     meeting that you attended in December, sometime  
6     after December 11th when you apparently resigned  
7     but before you were off the payroll, correct?

8           A.   Yeah.   I wasn't officially resigned until  
9     December 20th I believe or 18th, something like  
10    that.   Because of the amount of unpaid leave I had  
11    accumulated I was in effect taking vacation, but I  
12    had additional people calling me with questions  
13    during that period even though --

14          Q.   So you attended a meeting by Zoom with  
15    Ripple representatives?

16          A.   I believe so.

17          THE REPORTER:   Guys.

18          Q.   And there was also a meeting I believe in  
19    September that Ms. Cross, Mr. Ceresney, and various  
20    people attended, correct?

21          A.   You would know the date better than I, but  
22    yes.



1 Q. And then there was a meeting with the  
2 chairman in August; is that correct?

3 A. August of 2018, yes.

4 Q. All right.

5 Now, directing your attention to the  
6 meeting in September where you answered questions  
7 in response to Mr. Tenreiro about what you said to  
8 Ripple.

9 A. Right.

10 Q. Did you prepare talking points prior to  
11 that meeting?

12 A. No.

13 Q. Was there a memorandum or a transcript  
14 made of what was discussed at that meeting?

15 A. Not that I'm aware of.

16 Q. Now, you testified that you didn't have a  
17 specific recollection about what was discussed in  
18 December, the December 2020 meeting, correct?

19 A. Yes. Yes.

20 Q. All right. And the September meeting  
21 obviously was a few months before that?

22 A. Yes.

1 Q. Mr. Tenreiro asked you a series of leading  
2 questions in which you described what you said.  
3 I'd like to have you focus on what your  
4 recollection is of specifically what you said.

5 MR. TENREIRO: Object to form.

6 MR. FIGEL: Do you have a specific  
7 recollection of the words you spoke on the issue of  
8 bringing the company into compliance?

9 A. Yes.

10 Q. What specifically did you say?

11 A. This is probably not verbatim, but I think  
12 the beginning of the conversation was we understand  
13 you want to come into compliance. If you want to  
14 come into compliance you need to register these  
15 sales or stop these sales that you're doing  
16 periodically on -- I remember expressing some  
17 surprise that that had been ongoing.

18 Q. And you remember speaking those words?  
19 You're not describing what you said. Those are the  
20 words you remember saying; is that correct?

21 A. Again, it's probably not verbatim, but  
22 that was the message I was providing.

1 Q. I'm not asking about the message. I'm  
2 asking about the words.

3 A. Okay. The words were I think I started  
4 with I'm very surprised to see that you are still  
5 offering XRP on an unregistered basis. You're here  
6 to talk about how to come into compliance, you  
7 should stop doing that before we even think about  
8 anything else that we could do here.

9 Q. What did Ms. Cross say in response to  
10 that?

11 A. I think she said she understood.  
12 Basically her response was one of I get it.

13 Q. Do you remember the specific words she  
14 said in response?

15 A. I don't.

16 Q. How about Mr. Ceresney?

17 A. I don't think he had much to say about  
18 it.

19 Q. Did you refresh -- prior to your testimony  
20 in connection with the preparation for your  
21 deposition did you review any documents that  
22 refreshed your recollection about what specifically

## 1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, TINA M. ALFARO, Registered Professional  
3 Reporter, Certified Realtime Reporter, and Notary  
4 Public, the officer before whom the foregoing  
5 deposition was taken, do hereby certify that the  
6 foregoing transcript is a true and correct record  
7 of the testimony given; that said testimony was  
8 taken by me stenographically and thereafter reduced  
9 to typewriting under my direction; that reading and  
10 signing was requested; and that I am neither  
11 counsel for, related to, nor employed by any of the  
12 parties to this case and have no interest,  
13 financial or otherwise, in its outcome.

14 IN WITNESS WHEREOF, I have hereunto set my  
15 hand and affixed my notarial seal this 27th day of  
16 July, 2021.

17 My Commission expires October 31, 2025.

18  
19  
20  
21 \_\_\_\_\_  
22 NOTARY PUBLIC IN AND FOR THE

DISTRICT OF COLUMBIA